

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1339 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BALVANTSINH Y ZALA

Versus

GUJARAT WATER SUPPLY &SEWERAGEBOARD

Appearance:

MR PH PATHAK for Petitioner

SERVED for Respondent No. 1

MR PS CHARI for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/07/96

ORAL JUDGEMENT

None appears for the petitioner. Learned Mr. PS Chari appears for respondent No.2.

2. The petitioner herein was appointed as peon for a period of 29 days under the respondents herein by an order dated 26th June, 1984. It is the case of the petitioner that the petitioner has worked as peon continuously under the respondents. However, with a view

to depriving the petitioner of benefits of regular service, several orders have been issued by the respondents giving appointments to the petitioner for a period of 29 days. The petitioner has contended that the practice of the respondents in issuing appointment orders for a period of 29 days is violative of the labour laws and it amounts to exploitation. The petitioner, thus, worked till 20th September, 1985 and since then, his services have been terminated by the respondents without making proper order terminating his services. The petitioner has further contended that in the similar set of circumstances, this Court allowed petition being Special Civil Application NO. 711 of 1985 and the said decision of the learned single Judge has been confirmed in the Letters Patent Appeal No. 326 of 1985. The petitioner has also contended that the termination of his services is violative of Rule 33(b).

3. In the circumstances, the petitioner has prayed for a declaration that the termination of the services of the petitioner is illegal and invalid. He has further prayed that the respondents be directed to continue the petitioner in service.

4. The claim of the petitioner has been contested by the respondent No.2 by filing counter affidavit. It has been stated that the petitioner was appointed by way of stopgap arrangement and he was not appointed by calling the names from the Employment Exchange. nor had he been subjected to any competitive test. It has been denied that the petitioner was serving continuously till 20th September, 1985 as alleged by the petitioner. It has been contended that the petitioner was appointed by way of stopgap arrangement and no right to service has accrued to the petitioner on account of such short term temporary appointments. It has been further stated that the petitioner's appointments were for a temporary period and upon the expiry of the said term, his services came to an end. It is denied that the respondents had acted in contravention of the labour laws or any other law made in that behalf.

5. I have perused the appointment orders made in favour of the petitioner which are annexed to the petition as well as the affidavit made by the petitioner in rejoinder. On perusal of the said appointment orders, it appears that the petitioner was appointed for a temporary basis by way of stopgap arrangement for a period of 29 days from the date he reported for duty. Some times he had been appointed to serve as a peon and some times, he had been appointed to serve as Chowkidar.

Thus, it is evident that neither the petitioner has been appointed after following due selection procedure nor was he continued in service either as a peon or as a chowkidar. The appointments of the petitioner were purely on temporary basis and no right to service accrued to the petitioner pursuant to such orders of appointments. In similar cases, this Court, on several occasions, has deprecated appointments to the public service without following due selection process. The Courts have refused to regularise services of such temporary public servants as that would amount to parallel source of recruitment dehors the relevant rules.

6. Reliance placed by the petitioner on rule 33(b) of the Bombay Civil Service Rules is also misplaced. The petitioner has failed to show that the provisions contained in the Bombay Civil Service Rules are applicable to the employees of the respondent Board. Further, the petitioner's services came to an end upon expiry of period for which the petitioner was appointed and no order of termination has been made against him.

7. In view of the judgments of this Honourable Court in the matter of Bharati Nanubhai Balsara v/s., State of Gujarat and others, [1989(1) GLR pg.659] and Dinesh Shivubha Parmar v/s. State of Gujarat and others [1992 (1) GLR 608], the petition is required to be dismissed. It be noted that the judgment of this court passed in the special civil application no. 711 of 1985 (relied upon by the petitioner has also been considered by this Court in the case of Dinesh Parmar (supra).

8. In view of the above, petition requires to be dismissed. Accordingly, the petition is dismissed with costs. Rule is discharged.

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